



Signed and Filed: December 8, 2022

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:) Bankruptcy Case
PG&E CORPORATION,) No. 19-30088-DM
) Chapter 11
- and -) Jointly Administered
PACIFIC GAS AND ELECTRIC COMPANY,)
Reorganized Debtors.)
☐ Affects PG&E Corporation)
☐ Affects Pacific Gas and)
Electric Company)
☒ Affects both Debtors)
* All papers shall be filed in)
the Lead Case, No. 19-30088 (DM).)

ORDER DENYING MOTION TO RECUSE

I. INTRODUCTION

On November 17, 2022, Mr. William B. Abrams filed his Motion Pursuant to Bankruptcy Rule 5004 and 28 U.S.C. § 144 and 455 and Bankr. Local Rule 3-14 for Entry of an Order Authorizing the Recusal of the Honorable Dennis Montali ("Motion") (Dkt. 13260). Mr. Abrams has located a few instances where a small

1 number of this judge's normal professional activities have
2 crossed paths with the professional activities of a local
3 bankruptcy practitioner, Ms. Debra Grassgreen, and her legal
4 representations of clients and her own interests that have come
5 before this court. Mr. Abrams has also located what he believes
6 are instances where this judge's normal professional duties have
7 crossed paths with Eric Carlson. With that history, the Motion
8 focuses principally on decisions this court has made about an
9 interest important to him - the limited availability to a small
10 number of parties, including Ms. Grassgreen and Mr. Carlson, of
11 judicial review of the disposition of fire victims' claims after
12 the extensive non-judicial review of thousands of them that do
13 not have that option.

14 Because the prior contacts provide no basis to recuse, and
15 because none of the judicial decisions that have been identified
16 is a basis to recuse, the court DENIES Mr. Abrams' motion.

17 II. APPLICABLE LAW

18 Mr. Abrams seeks recusal under 28 U.S.C. §§ 144 and 455.¹
19 Both statutes deal with when a judge must recuse himself due to
20 personal bias. However, "Section 144 applies only to district
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22 ¹ Mr. Abrams has not stated whether his own claim has been
23 determined through the Fire Victim Claim Resolution Procedures
24 discussed below. If it has been determined and he has accepted
25 that determination, he has no standing to make a complaint about
26 the lack of judicial review of fire victim claims. While Mr.
27 Abrams purports to seek judicial review of all such claims and
28 not just his own, he is not an ombudsman, an appointed
representative, an attorney or any other sort of fiduciary with
the ability to represent them. In the interest of dealing with
the merits of Mr. Abrams' concerns, the court will give him the
benefit of the doubt and assume he has standing.

1 court judges, and not to bankruptcy judges. Rather, bankruptcy
2 court judges are subject to recusal only under 28 U.S.C. § 455.”
3 *In re Smith*, 317 F.3d 918, 932 (9th Cir. 2002), *cert. denied*,
4 538 U.S. 1032, 123 S.Ct. 2074, 155 L.Ed.2d 1060 (2003)
5 (citations omitted). Federal Rule of Bankruptcy Procedure
6 5004(a) also specifies that disqualification of bankruptcy
7 judges is governed by 28 U.S.C. § 455. Accordingly, while both
8 statutes are functionally identical, this order addresses only
9 28 U.S.C. § 455 (hereinafter “section 455”).

10 Section 455 reads, in relevant part:

11 (a) Any justice, judge, or magistrate judge of
12 the United States shall disqualify himself in any
13 proceeding in which his impartiality might
reasonably be questioned.

14 (b) He shall also disqualify himself in the
15 following circumstances:

16 (1) Where he has a personal bias or prejudice
17 concerning a party, or personal knowledge of
18 disputed evidentiary facts concerning the
proceeding;

19 In the Ninth Circuit, “the test is ‘whether a reasonable
20 person with knowledge of all the facts would conclude that the
21 judge’s impartiality might reasonably be questioned.’” *United*
22 *States v. Wilkerson*, 208 F.3d 794, 797 (9th Cir.2000) (*quoting*
23 *United States v. Hernandez*, 109 F.3d 1450, 1453 (9th Cir.1997)).
24 “The ‘reasonable person’ in this context means a ‘well-informed,
25 thoughtful observer,’ as opposed to a ‘hypersensitive or unduly
26 suspicious person.’” *Clemens v. United States Dist. Court*, 428
27 F.3d 1175, 1178 (9th Cir. 2005) (*quoting In re Mason*, 916 F.2d
28 384, 385 (7th Cir. 1990)).

1 "[J]udicial rulings alone almost never constitute a valid
2 basis for a bias or partiality motion. *Liteky v. U.S.*, 510 U.S.
3 540, 555 (1994) (*citing United States v. Grinnell Corp.*, 384
4 U.S. 563, 583 (1966)). If judicial rulings alone are held up as
5 a source of bias, "it can be the basis of recusal only when the
6 judge displays a deep-seated and unequivocal antagonism that
7 would render fair judgment impossible." *F.J. Hanshaw Enters.,*
8 *Inc. v. Emerald River Dev., Inc.*, 244 F.3d 1128, 1145 (9th Cir.
9 2001). Otherwise, such judicial errors "are proper grounds for
10 appeal, not recusal." *Liteky v. U.S.* 510 U.S. at 555.

11 III. BACKGROUND FACTS

12 A. Mr. Abrams' Complaints of Extra-Judicial Contacts.

13 Judge Montali has never met Ms. Grassgreen's spouse or
14 child, nor the spouse of Mr. Carlson. His only contact with Mr.
15 Carlson was in the course of a hearing on the issue of judicial
16 review of fire victims' claims, described below.

17 Apart from judicial involvement through cases in which Ms.
18 Grassgreen has appeared before Judge Montali (discussed below),
19 Mr. Abrams has called out three instances where he believes Ms.
20 Grassgreen's or Mr. Carlson's involvement with this judge
21 provides a basis for recusal.

22 This first is an article from sixteen years ago that
23 describes a very routine occurrence: attendance at an event,
24 this one hosted by the American Bankruptcy Institute ("ABI"),
25 and involving numerous bankruptcy practitioners and judges. Mr.
26 Abrams provides no information or evidence that Ms. Grassgreen
27 and Judge Montali had any communications or extra-judicial
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1 involvement in connection with that public bar activity, or even
2 that they knew the other was present.

3 Second, the Motion makes one reference to Mr. Carlson
4 alleging a prior professional relationship due to Mr. Carlson's
5 role as the Managing Director of the company that served as
6 PG&E's financial advisor during PG&E's 2001 bankruptcy.

7 Mr. Abrams provides nothing to indicate that Mr. Carlson
8 had any involvement through that engagement with Judge Montali.
9 If it did, nothing has been shown why such involvement would be
10 inappropriate, given Judge Montali must interact in the course
11 of supervising any bankruptcy case, with the employed
12 professionals of every corporate debtor.

13 Next, Mr. Abrams identifies a bar education program in 2012
14 where Ms. Grassgreen and Judge Montali (along with others) were
15 to participate on a two-hour panel on individual Chapter 11
16 bankruptcy cases in connection with the annual National
17 Conference of Bankruptcy Judges. What Mr. Abrams did not say
18 (and perhaps did not know) was that Ms. Grassgreen had to
19 withdraw from that program, so she did not appear on it with
20 Judge Montali.

21 For the sake of completeness, the court notes that Judge
22 Montali and Ms. Grassgreen are both Fellows of the American
23 College of Bankruptcy. In 2013, 2015, and 2017, they both
24 participated (along with numerous other Fellows) in projects at
25 the University of Southern California School of Law involving
26 dozens of law students who participated in a mediation
27 competition. There was no personal contact beyond the routine
28 conduct of the competition.

1 B. Complaints About Judge Montali's Involvement in
2 Judicial Proceedings.

3 The motion refers to a Bankruptcy Appellate Panel decision
4 in a case in which Imperial Capital Bank is the appellee and
5 Judge Montali was a member of the panel. There is nothing to
6 indicate that Mr. Carlson, if he was connected with Imperial
7 Capital Bank at that time, had any involvement in that decision
8 or how an appellate matter concerning that bank is relevant to
9 this recusal issue.

10 The following are cases assigned to Judge Montali in the
11 past (other than PG&E Corporation and Pacific Gas and Electric
12 Company) where the docket reflects involvement by Ms.
13 Grassgreen:

14 13-32281 Exigen (USA), Inc.
15 15-31430 Rdio, Inc.
16 16-30296 Blue Earth, Inc.
17 16-30297 Blue Earth Tech, Inc.
18 16-31309 APVO Corporation

19 Mr. Abrams cited all but the APVO Chapter 15 case, but in
20 none did he mention or allege that Ms. Grassgreen had any
21 communications or extra-judicial dealings with the judge nor did
22 he complain about any decision or actions of the judge. His
23 reference to other cases that involved Ms. Grassgreen and Mr.
24 Carlson, with no involvement by Judge Montali, are totally
25 irrelevant to the present recusal issue.

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1 IV. PROCEDURAL HISTORY IN PG&E CORPORATION AND PACIFIC GAS AND
2 ELECTRIC COMPANY CASES RE ELIMINATION OF JUDICIAL REVIEW
3 PER PLAN

4 On June 20, 2020, the court entered the Order Confirming
5 Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of
6 Reorganization Dated June 19, 2020 ("Confirmation Order") (Dkt.
7 8053). Section 18 of the Confirmation Order authorizes the
8 creation and implementation of the Fire Victim Trust according
9 to the Fire Victim Trust Documents (consisting of the
10 Confirmation Order, the Plan, the Fire Victim Trust Agreement
11 and the Fire Victim Claims Resolution Procedures). Section
12 18(k), titled "Court Review of Claims," states:

13 Notwithstanding anything to the contrary in the Plan,
14 this Confirmation Order, or the Fire Victim Trust
15 Documents, only the parties who timely submitted an
16 objection to the Fire Victim Trust Documents as noted
17 herein shall have the right to seek court review in
18 accordance with Section IX of the Fire Victim Claims
19 Resolution Procedures.

20 Ms. Grassgreen and Mr. Carlson are only two of the
21 creditors who submitted an objection to the Fire Trust
22 Documents. The parties who timely submitted an objection to the
23 Fire Trust Documents, as noted in the Confirmation Order, were
24 Adventist Health System/West and Feather River d/b/a Adventist
25 Health Feather River, Paradise Unified School District, Northern
26 Recycling and Waste Services, LLC/Northern Holdings, LLC, Napa
27 County Recycling & Waste Services, LLC/Napa Recycling & Waste
28 Services, LLC, Christian & Missionary Alliance Church of
Paradise, d/b/a Paradise Alliance Church, Paradise Irrigation
District, AT&T Corp. and all affiliates, and Comcast Cable

1 Communications, LLC and all affiliates [Docket Nos. 7072 and
2 7121], Butte County Mosquito and Vector Control District
3 [Docket No. 7145], Eric and Julie Carlson [Docket Nos. 7207 and
4 7363], Karl Knight [Docket No. 7366]², and Mary Kim Wallace
5 [Docket No. 7367].

6 Section VIII of the Fire Victim Claims Resolution
7 Procedures, titled "Dispute Resolution" is contained in the Plan
8 Supplement (Dkt. 8057) (consisting of the PG&E Fire Victim Trust
9 Agreement with all exhibits). The Dispute Resolution section
10 sets forth the three-step process (Reconsideration, Appeal to a
11 Neutral, and Trustee Determination) by which all other fire
12 victim claimants who did not timely submit an objection to the
13 Fire Victim Trust Documents may dispute a claim determination.³

14 V. Mr. ABRAMS' SEVERAL MOTIONS AND SPECIFIC OBJECTIONS RE LACK
15 OF JUDICIAL REVIEW; ALL FINAL

16 Pages 10 through 25 of the Motion detail Mr. Abrams'
17 previous motions filed throughout the course of these cases,
18 both before and after the Confirmation Order was entered. Some
19 portion of almost every motion filed post-confirmation has
20 called into question the fairness of the judicial review
21 procedure for the objecting claimants set forth in the

22
23 ² The claim of Carl Knight includes Ms. Grassgreen and their
24 minor child.

25 ³ On November 30, 2022, the date Mr. Abrams' listed on his
26 Motion as the deadline for any responses to the Motion, Ms.
27 Grassgreen and Mr. Carlson filed a joint Response (Dkt. 13296)
28 with attached declarations signed under penalty of perjury. The
Response and declarations describe each individual's independent
tracking of the bankruptcy and timely objections to the proposed
treatment of fire victim claims.

1 Confirmation Order and has requested that judicial review be
2 expanded to more claimants. Mr. Abrams has not appealed the
3 Confirmation Order or the rulings on any of his prior motions.

4 While Mr. Abrams' objection to the Debtors' Disclosure
5 Statement (Dkt. 5700) was not addressed directly (the Debtors
6 filed multiple amendments to the Disclosure Statement prior to
7 the court's approval), all others were resolved on the merits of
8 those motions. Those orders are final, on the merits, and not
9 in and of themselves a basis for recusal.

10 VI. THERE IS NO BASIS FOR RECUSAL

11 At bottom, the Motion alleges personal bias in favor of Ms.
12 Grassgreen and her family and Ms. Carlson and his spouse to such
13 an extent that Judge Montali was biased against Mr. Abrams and
14 all other fire victim claimants. The sole evidence for this
15 bias, apart from rulings made in the PG&E case, is discussed
16 above.

17 Canon 4(A) (1) of the Code of Conduct for United States
18 Judges states that "A judge may engage in extrajudicial
19 activities, including law-related pursuits and civic,
20 charitable, educational, religious, social, financial,
21 fiduciary, and governmental activities, and may speak, write,
22 lecture, and teach on both law-related and nonlegal subjects."⁴
23 The commentary to Canon 4 goes on to state that "[c]omplete
24 separation of a judge from extrajudicial activities is neither
25 possible nor wise," as judges are in "a unique position to
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27
28 ⁴ Available at <https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges#e>.

1 contribute to the law, the legal system, and the administration
2 of justice."

3 As to the ABI event Judge Montali attended there is no
4 assertion of any sort of communication with Ms. Grassgreen.
5 Instead, Mr. Abrams presents his speculation that such
6 communication occurred, and extended to case altering personal
7 bias, to be a "reasonable" assumption. It is not. See *In re*
8 *Pac. Thomas Corp.*, 2021 WL 4773000 (N.D. Cal. Oct. 13, 2021).

9 What is left proves only that Judge Montali presides over
10 cases involving attorneys and other interested parties. No
11 reasonable person can extend the concept of "personal bias" to
12 every person who has appeared before a bankruptcy judge.

13 Finally, the rulings Mr. Abrams continues to question were
14 decided on the merits of the motions, oppositions, and all other
15 documents before the court. These decisions do not express the
16 type of unequivocal antagonism from which any bias could be
17 extrapolated. More importantly, there is no "deep-seated and
18 unequivocable antagonism" toward Mr. Abrams for any matters he
19 has presented to the court. Any perceived errors in those
20 decisions would have been ripe for appeal during the appropriate
21 appeal period, but are not in themselves cause for recusal
22 months and years after the fact.

23 VII. CONCLUSION

24 For the reasons set forth above, the court HEREBY DENIES
25 the Motion.

26 ****END OF ORDER****
27
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